

SIGNATURE OF ATTORNEY OF RECORD

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DRESICK FARMS, INC.,

Plaintiff,

v.

MIVCO PACKING COMPANY, LLC,

Defendant.

CASE NO.

ADR
C08-03175

COMPLAINT FOR VIOLATION OF
THE PERISHABLE AGRICULTURAL
COMMODITIES ACT [7 U.S.C.
§499b(4)] & BREACH OF CONTRACT

Plaintiff Dresick Farms, Inc. ("Dresick Farms") complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331, as this action arises under the Perishable Agricultural Commodities Act, 7 U.S.C. § 499b(4). In addition, under 28 U.S.C. § 1367(a), this Court has jurisdiction of any state law claims and remedies by virtue of the Court's supplemental jurisdiction, because the state law claims form part of the same case or controversy and involve a common nucleus of operative facts. Venue is proper under 28 U.S.C. § 1391(b).

2. Plaintiff Dresick Farms is and was during all material times a California corporation, with its principal place of business in Huron, California.

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NOTICE OF ASSIGNMENT
TO MAGISTRATE JUDGE

1 9. Although Plaintiff Dresick Farms grew the lettuce as agreed and delivered it to
2 Defendant Mivco, Defendant only paid Plaintiff \$267,025.00 of the sum owed. Specifically,
3 Defendant Mivco failed to make a payment of \$133,512.50 that was due on March 1, 2007, and
4 it failed to make a payment of \$133,512.50 that was due on April 1, 2007, and consequently,
5 \$267,025.00 remains well past due and still owing from Defendant Mivco to Plaintiff.

6 10. The Perishable Agricultural Commodities Act, 7 U.S.C. § 499b(4), provides that
7 “it shall be unlawful” for “any commission merchant, dealer, or broker” – such as Defendant
8 Mivco – to fail or refuse to “make full payment promptly” in respect to any transaction involving
9 perishable agricultural commodities “to the person with whom such transaction is had” or “to
10 fail, without reasonable cause, to perform any specification or duty, express or implied, arising
11 out of any undertaking in connection with such transaction.”

12 11. By failing to make full payment promptly, as promised in its contract with
13 Plaintiff Dresick Farms, Defendant Mivco violated 7 U.S.C. § 499b(4).

14 12. As a direct and proximate result of Defendant’s wrongful acts and omissions,
15 Plaintiff has been damaged in the sum of \$267,025.00.

16 13. In addition, the contract between Plaintiff and Defendant provides that should any
17 action in law or equity be necessary to enforce the terms of the contract, the prevailing party
18 shall be entitled to reasonable attorneys’ fees and costs, including attorneys’ fees and costs in
19 bankruptcy proceedings.
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IV.

SECOND CAUSE OF ACTION
(Breach of Contract)

14. Plaintiff realleges and incorporates by reference paragraphs 1 through 13 of this Complaint as though fully set forth in this paragraph 14.

15. Plaintiff has fulfilled all of its obligations under the contract with Defendant Mivco; however, Defendant has failed to pay Plaintiff the sum that it agreed to pay for the fresh lettuce that Defendant purchased from Plaintiff.

16. Plaintiff has repeatedly demanded that Defendant pay the \$267,025.00 that is well past due; however, in breach of its contract with Plaintiff, Defendant Mivco has failed to do so.

17. As a direct and proximate result of Defendant Mivco's breach of the contract with Plaintiff, Plaintiff have been damaged in the sum of \$267,025.00, plus attorneys' fees and costs incurred in enforcing the contract.

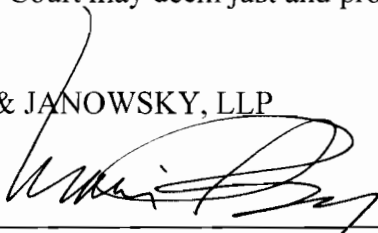
WHEREFORE, Plaintiff Dresick Farms prays for judgment against Defendant Mivco as follows:

- A. For damages of \$267,025.00;
- B. For interest at the highest rate allowable from the date the obligation became due and payable to Plaintiff until fully paid;
- C. For attorneys' fees and costs; and
- D. For such other and further relief as the Court may deem just and proper.

Date: July 1, 2008

RYNN & JANOWSKY, LLP

By:


MARION I. QUESENBERY
Attorneys for Plaintiff
Dresick Farms, Inc.